IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.15 OF 1992

Commander A.R.Ravindra,
age 41 years, Occ.Naval service,
R/o C/o College of Defence Management,
Bolarum, Secunderabad - 500 010. ...Applicant

Versus

Jagannath B.Jagtap,
age about 60 years, Occ.service,
residing at 1623/24, Bhimupra,
Pune Cantonment, Pune - 411 001. ...Respondent

ALONG WITH

CIVIL REVISION APPLICATION NO.16 OF 1992

Commander A.R.Ravindra,
age 41 years, Occ.Naval service,
R/o C/o College of Defence Management,
Bolarum, Secunderabad - 500 010. ...Applicant

Versus

1.Bhagirathi R.Ghodekar,
since deceased, by heirs:
1A. Ravindra R.Ghodekar,
Adult, R/o at : 1623,
Bhimupra, Lane 19,
Pune - 411 001. ...Respondent

.....

Mr.C.R.Dalvi with Mr.K.Y.Mandlik for Applicant.

Mr.Nitin Jamdar for Respondents.

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ALONG WITH

CIVIL REVISION APPLICATION NO.258 OF 2001

Jagannath B.Jagtap,
age about 60 years, Occ.service,
residing at 1623/24, Bhimupra,
Pune Cantonment, Pune - 411 001. ...Applicant

Versus

Commander A.R.Ravindra,
age 48 years, Occ.Naval service,
R/o C/o College of Defence Management,
Bolarum, Secunderabad - 500 010. ...Respondent

ALONG WITH

CIVIL REVISION APPLICATION NO.259 OF 2001

Shri Ravindra R.Ghodekar,
age about 38 years, Occupation
Service, Resident of 1623/24,
Bhimupra, Lane 19,
Pune - 411 001. ...Applicant

Versus

Commander A.R.Ravindra,
age 48 years, Occ.Naval service,
R/o C/o College of Defence Management,
Bolarum, Secunderabad - 500 010. ...Respondent

.....

Mr.Nitin Jamdar i/b Mr.V.B.Rajure for Applicants.

Mr.C.R.Dalvi with Mr.K.Y.Mandlik for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JUNE 26, 2006.

JUDGMENT :

1. All these Revision Applications filed under Section 31F of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 'Act), can be disposed of by common Judgment.

2. The Applicant in Civil Revision Application Nos.15 of 1992 and 16 of 1992 is the landlord and Respondents in the respective Applications are tenants in respect of premises consisting of two rooms each on the ground floor of house No.1623/24, Lane No.19, Bhimpura, Pune within the limits of Pune Cantonment. The respective tenants have filed separate Revision Applications against the self same Judgment and Order passed by the lower Court being Civil Revision Application Nos.258 of 2001 and 259 of 2001. The lower Authority in the proceedings before it against the respective tenants has rejected the claim of the landlord of bonafide requirement of the suit premises for himself, his old aged parents and children. Even while rejecting the claim of the landlord, the plea of the tenants that the

transaction in favour of the landlord of sale was sham and colourable one, has been negatived by the lower Authority. Against that finding, the tenants have come up in separate Revision Applications while supporting the final order passed by the lower Authority of rejecting the application for possession of the suit premises filed by the landlord. The landlord, on the other hand, has challenged the finding recorded by the lower Authority that the requirement of the landlord as asserted in the application was not bonafide; and prays that the impugned decision be set-aside and instead, his application for possession of the suit premises be allowed. In this backdrop all the four Revision Applications are being disposed of together by this common Judgment.

3. Briefly stated, the landlord filed two separate applications before the competent Authority, Pune being Application No.5 of 1991 and 6 of 1991 against the respective tenants. The case made out in the respective Applications filed by the landlord for the relief of possession of the respective suit premises is identical. For the

sake of convenience, I will refer to the averments made in application No.5 of 1991 filed before the competent Authority against the tenant Ghodekar. Para 3 of the said application will be of relevance to decide the present matters. The same reads thus:

> "3. The Applicant is a Member of the Armed Forces of the Union of India and the suit premises are bonafide required by the Applicant for occupation by the members of his family. The Applicant further says that being in the Defence Services he is liable to transfer anywhere in the country and abroad. Due to frequent transfers to different places, his aged parents are finding it very difficult to accompany him on every posting. The Applicant's father is 75 years old and is a patient of hypertension and acute arthritis. The applicant's mother is aged 70 years and also a patient of hypertension and failing eye-sight. The children of the Applicant are to complete their higher education in Pune where Central Schools are available. Apart from that the best medical facilities at the Command Hospital are available for the parents of the Applicant. The Applicant's family consists of himself, his wife, two children aged 12 and studying in IX Standard and aged 12 studying in VIII Standard respectively, and his two aged parents. The Appellant has no other accommodation of his own in Pune. The applicant, is therefore, filing this suit for possession under Sec.13-A(1) of the Bombay Rents, Hotels and Lodging House Rates, Control Act, 1947. The Applicant submits that much greater hardship will be

> caused to him if the possession is not granted to him. The Applicant is producing the necessary certificate issued by the Authorised Officer concerned."

4. The tenants filed their written statements in opposition of respective applications filed by the landlord. According to the tenants, both the Applications were liable to be dismissed. The principal plea of the tenants is that the landlord has not made full disclosure of all the relevant matters. It was asserted by the tenants that the applications taken out by the landlord were malafide and abuse of process of law. It is stated that the original owner of the suit premises who had inducted the tenants in the premises, is the brother-in-law of the Applicant. It is stated that the transaction of sale of the suit building in favour of the Applicant was executed to take disadvantage of the provisions of Section 13A1 of the Act and was a colourable transaction. That the proceedings were abuse of process of law, inasmuch as the original landlord had no legitimate ground to evict the tenants and to overcome that difficulty, the vendor Kumar S.Mudliar, brother-in-law of the landlord, entered into sale

transaction in favour of the Applicant so as to invoke special provision of Section 13A1 of the Act, as the Applicant/landlord was member of armed forces. The tenants asserted that the Applicant/landlord has suppressed material facts that the property consists of ground floor and first floor plus attic; that the first floor and attic was in the possession of the original landlords. The Applicant/landlord, however, has deliberately with a view to mislead the Court, has not given correct description of the suit property and is silent regarding possession of the first floor of the suit property with the vendors. It is stated that the landlord has made only one solitary statement that he has no other accommodation of his own in Pune, which statement is vague and misleading. Insofar as the claim of bonafide requirement of the landlord, it is stated in the written statement that the parents of the Applicant/landlord were not staying with him, though provision of Section 13A1 could be invoked only if the parents were ordinarily residing with the Applicant/landlord and were dependant on him. No such fact has been pleaded in the application as

filed, for which reason, the claim of the Applicant/landlord for the requirement of his old aged parents will have to be rejected. It is stated in the written statement that in fact, the parents of the Applicant/landlord were wealthy persons and were permanent residents of Belgaum, Karnataka. That they occasionally visited the Applicant and were not dependent on the Applicant. Insofar as the requirement of children for education purpose, the tenants assert that even that requirement is not bonafide. It is stated that the transfer of Applicant was restricted to the South Naval Zone and not all over India, and that, because the Applicant/landlord was in teaching line, his postings were not frequent. Moreover, at the transferred places, the Applicant/landlord was provided big quarters and bungalows for his accommodation. In substance, the tenants disputed the claim of the landlord that the suit premises were required for accommodating the children for their education.

5. The matter went for trial when the Applicant/landlord examined himself. The

respective tenants also entered the witness box. One Vimal Damodar Tikhe, who was serving in Pune Cantonment Board was also examined. On analysing the evidence on record, the lower Authority found that admittedly, the entire property consists of ground floor, first floor and attic; that there are four rooms on the ground floor as well as on the first floor; that each of the tenant was in occupation of two rooms on the ground floor. The Competent Authority then answered the main question as to whether the Sale Deed executed in favour of the Applicant/landlord was a colourable transaction entered into between Mudliars/original landlord and the Applicant/landlord with a view to take disadvantage of the provisions of Section 13A1 of the Act. The Competent Authority has noted that the tenants pressed into service five circumstances to support their plea that the Sale Deed was colourable transaction. The first circumstance was that Shri Kumar Mudliar who is the co-vendor, is the husband of the sister of the Applicant/landlord. Secondly, Mudliars had earlier made an attempt to sell only the ground floor of the property to the Applicant/landlord so as to

take benefit of Section 13A1 of the Act to get rid of the tenants. Thirdly, that the sale consideration referred to in the Sale Deed was inadequate, which creates doubt about its genuineness. Fourthly, that one of the vendor is still occupying the premises inspite of the Sale Deed executed in favour of the Applicant/landlord and possession thereof has not been delivered to the Applicant so far. Lastly, that there is clear misstatement of fact made in the Sale Deed that entire property is in possession of the tenants.

6. The Competent Authority answered all the circumstances against the tenants, except, the fourth circumstance that the vendors were still occupying the entire first floor of the property in question inspite of the sale in favour of the Applicant/landlord. Even so, the said issue No.4 came to be answered against the tenants. The tenants have therefore carried the Revision Applications before this Court under Section 31F of the Act to question the correctness of the conclusion reached on the issue No.4-as to whether the sale of the premises in favour of the Applicant

was colourable transaction and has been entered solely with an intention to take disadvantage of Section 13A1 of the Act.

7. The Competent Authority then proceeded to examine the issue of bonafide requirement. While considering the same, the Competent Authority has found as of fact that there was no pleading in the application that the old aged parents were the members of the family of the Applicant and dependent on him. On that finding, the plea of bonafide requirement for accommodating the parents in the suit premises as put forth by the Applicant came to be negatived. The Competent Authority has then examined the case of the Applicant that the premises were required by the Applicant to accommodate his son and daughter for providing them proper education at Pune. Even this issue has been answered against the Applicant by the Competent Authority, on analysing the materials on record. The landlord has therefore filed two separate Revisions challenging the findings as well as the conclusions of the Competent Authority on issue No.3. The landlord has also challenged the adverse

finding of the Competent Authority with regard to the fourth circumstance pressed by the tenants in relation to Issue No.4.

8. After having considered the rival submissions and going through the materials on record, I shall first advert to the provisions of Section 31F of the Act whereunder the Revision Applications have been filed by the respective parties. Section 31F reads thus :

> 31F. (1) No appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 31E.
>
> (2) The High Court may, at any time suo motu or on the application of any person aggrieved, for the purpose of satisfying itself that an order made in any case by the Competent Authority under section 31E is according to law, call for the record of that case and pass such order in respect thereto as it thinks fit :
>
> Provided that, no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of the date of the order sought to be revised."

9. On plain reading of this provision, it is seen that no Appeal would lie against the decision of the Competent Authority which proceedings are required to be disposed of summarily in terms of provisions of Part II-A of the Act. Section 31A of the Act provides that Part II-A or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or any other law for the time being in force. Section 31C provides for the definition of landlord for the purpose of Part II-A. In the present case, the landlord is covered by the definition in terms of Section 31C(a) being member of the armed forces of the Union. Section 31D provides for special provisions for making application to Competent Authority for such landlord to evict the tenant. Section 31E provides for special procedure for disposal of such applications.

10. Against the decision of the Competent Authority in such proceedings, the only remedy provided by the Statute is Revision Application in terms of sub-section (2) of Section 31F of the Act.

Indeed, Section 31F is the pointer to the scope of enquiry to be undertaken by the High Court in exercise of powers under Section 31F (2) of the Act. It postulates that the High Court may, at any time, suo motu or on application by any person aggrieved, for the purpose of satisfying itself that an order made in any case by the Competent Authority under section 31E is according to law, call for the record of that case and pass such order in respect thereto as it thinks fit. The emphasis will have to be placed on expression "is according to law". In other words, the scope of authority of the High Court is to enquire into the relevant aspects of the matter to satisfy itself that the order passed by the Competent Authority "is according to law". That, however, does not mean that this Court will reappreciate the evidence as an Appellate Authority or substitute its findings in place of the findings of the competent Authority. In revision, just because another view is possible on reappreciation of the evidence, it is not open to interfere with the findings of the lower Authority on that ground. In appropriate cases where findings of fact recorded by lower

Authority were based on no evidence or there was misreading or non-consideration of any material evidence, it is open to the High Court in exercise of revisional jurisdiction to interfere. Keeping these parameters in mind, I shall now endeavour to examine the case made out by the rival sides.

11. The first question is as to the import of Section 13A1 of the Act. Section 13A1 of the Act is a special provision which comes to the aid of the designated landlord, inter alia, who is a member of armed forces of the Union or was such a member and has retired as such and one year has not elapsed since his retirement on the date of making of the application. The marginal note to Section 13A1 indicates the scope of that provision to encompass members of armed forces of Union, Scientist or their successors in interest entitled to recover possession required for their occupation.

12. As Section 13A1 is a special provision for the benefit of the designated landlord, falling within the definition of Section 31C of the Act,

for recovery of possession of the premises on the ground of bonafide requirement for himself and member of his family, by now, it is well settled that claim of such landlord has to be considered differently than that of an ordinary landlord. The landlord covered by this provision is not obliged to establish that his requirement is reasonable; nor is it necessary to consider the issue of comparative hardship in case of such landlord. All that is required to be established by such landlord, covered by this special provision, is that, his requirement is bonafide for himself or for member of his family.

13. The question is, whether the claim of the Applicant/landlord can be said to be bonafide. This question will have to be tested on two contentions. The first contention of the tenants is that the Sale Deed executed in favour of the Applicant is colourable transaction and has been effected only with a view to take advantage of the special provision, as the former landlord had no legitimate ground available to evict the tenants

from the suit premises. The second plea is that the requirement for the member of family as pressed into service was a non existing ground or not bonafide requirement and asserted only with a view to take benefit of Section 13A1.

14. Insofar as the first aspect is concerned, the Trial Court has analysed the said plea by adverting to five circumstances pressed into service on behalf of the tenants. Out of the five circumstances, the second, third and fourth have been negatived essentially on the reasoning that there is no sufficient evidence to accept the said circumstances. The circumstance which has been answered in favour of the tenants is that inspite of the Sale Deed executed on 14th August 1989 till the date of filing of the application by the Applicant/landlord on 15th February 1991 and even thereafter till recording of the evidence in July 1991, no effort has been made to take possession of the entire first floor and attic which was occupied by Kumar Mudliar, the former owner who incidentally happened to be the brother-in-law of the Applicant.

15. The question is: whether the approach of the competent Authority in answering issue No.4 can be said to be according to law? The competent Authority was required to take the totality of the established circumstances into account. Insofar as the first circumstance that Kumar Mudliar who is one of the vendor, is the husband of the sister of the Applicant, is concerned, there is no dispute about that position. It is also not in dispute that the house property was originally owned by four brothers, out of whom, one of them happens to be the brother-in-law of the Applicant. It is also not in dispute that the Sale Deed has been executed in favour of the Applicant/landlord on 14th August 1989. The competent Authority, however, found that merely because parties to the Sale Deed are related to each other, is not enough to hold that the transaction is bogus or a colourable transaction. Indeed, there is nothing wrong if the transaction is between relatives; but in the present case, something more emerges from the said transaction. The said house property which consists of ground floor having four rooms, first floor having four rooms and attic, "out of that only ground floor was

in possession of the two tenants". Inspite of that the Sale Deed executed on 14th August 1989 records that the entire building is in possession of tenants. The landlord was not able to explain this discrepancy. Moreover, no effort has been made to deliver possession of the first floor and attic to the Applicant/landlord, nor there is anything on record to indicate that the Applicant/landlord insisted for delivery of the possession of the said portion of the house property from the vendors. Even on the date of filing of the applications and thereafter till now, brother-in-law of the Applicant continues to occupy the entire first floor and attic portion of the building, that too, without any consideration. Whereas, in less than one and half years' time from the execution of the Sale Deed, the application for possession against the tenants came to be filed by the present Applicant/landlord invoking special provisions of Section 13A1 of the Act.

16. Indeed, the competent Authority may be justified in discarding the second and the third circumstance, namely, that Kumar Mudliar, former

landlord had earlier made an attempt to sell only ground floor of the property to the Applicant, so as to take advantage of provisions of Section 13A1 of the Act; and that the sale transaction in favour of the Applicant was for inadequate consideration, on the reasoning that those circumstances have not been proved in evidence. Even so, the first, the fourth and the fifth circumstance which is already established from record, taken in its totality instead of individually, would substantiate the stand of the tenants that the sale transaction in favour of the Applicant was colourable one. Discarding each of these circumstance on the reasoning that each one by itself would not be enough, is not the correct approach. The competent Authority instead, was required to reckon the totality of the circumstances. In that, the former landlord had no legitimate ground to evict the tenants from the suit premises. The former landlords are the close relatives of the Applicant. One of the co-vendor is the husband of the sister of the Applicant. The Applicant happens to be member of armed forces for which, he would get benefit of Section 13A1.

Presumably, to take benefit of special provision to evict the tenants, sale was effected in favour of the present landlord. The Sale Deed wrongly mentions that the entire house property is occupied by the tenants. On that representation, permission is obtained from the Cantonment Authority for transfer of the house property in favour of the Applicant/landlord. That statement in the Sale Deed as is established, is inaccurate-as first floor and attic portion of the house property was in possession of the original landlord who continued to remain in possession thereof even after execution of the Sale Deed. The Applicant landlord was not able to explain this discrepancy occurring in the Sale Deed. Indeed, the special provision requires the specified landlord to only establish "bonafide" requirement. Whether such requirement is reasonable one or not and whether comparative hardship will be caused to the tenant if order of eviction is passed, is of no consequence in such proceedings. The former landlord, if had resorted to proceedings for eviction on the ground of bonafide requirement would have been obliged to establish even the

issues of requirement being reasonable and of comparative hardships. Further, the original landlord continued to remain in occupation of the first floor and attic portion of the house property inspite of the Sale Deed executed in favour of the Applicant on 14th August 1989. The possession of the said portion of the house property is not delivered to the Applicant/landlord. No consideration is received by the Applicant/landlord from the Vendors for continuing to occupy the first floor and attic portion of the house property. That the original landlord vendors have not entered witness box and no attempt was made to examine them. In the cross-examination, the Applicant/landlord at the outset stated that he is not going to examine vendors as his witness. If so, adverse inference ought to be drawn due to non-examination of the vendors, who were the best persons to explain the circumstances in which they decided to sell the house property in favour of the Applicant/landlord and also for continuing to occupy the first floor and attic portion of the house property, that too, without any consideration. The application for possession

under Section 13A1 of the Act has been filed on 15th February 1991, which is less than one and half years from the Sale Deed dated 14th August 1989. Perhaps, to justify the filing of application in such a short time, it is during the course of evidence, for the first time, the Applicant/landlord stated that he intends to retire from service by 1993. No such case is made out in the original application as filed, which claim has been rightly discarded by the competent Authority, as afterthought.

17. Taking into account all these circumstances together, it leaves no manner of doubt that the sale in favour of the Applicant/landlord was only with a view to facilitate eviction of the two tenants on the ground floor, on the ground of bonafide requirement by taking recourse to special provision such as Section 13A1, which was otherwise not possible for the original landlords Mudliars, as they possess large number of other properties and no legitimate ground for evicting the tenants under the provisions of the Act was available to them.

18. Counsel for the tenants rightly pressed into service decision of the Apex Court in the case of **Winifred Ross & Anr. vs. Ivy Fonseca & Ors. reported in 1985 Mh.L.J. 411**. Indeed, the question posed in this case was whether a person who was formerly a member of the armed forces can recover possession of a building which was acquired by him after he had retired from the armed forces by invoking provisions of Section 13A1 of the Act. That issue has been answered in the negative. The Apex Court has, however, noted that Section 13A1 of the Act is a special provision and liberal construction of the said provision cannot be countenanced. The Apex Court in paragraph 3 has expressed concern that liberal construction of this provision would enable unscrupulous landlords who cannot get rid of their tenants to transfer their premises to ex-military men, so as to avail benefit of Section 13A1 with a private arrangement between them. In that case, the sale transaction was between the original landlord and person who had retired from the armed forces. Applying the principle underlying the above exposition to the

present case, although the applicant was member of the armed forces when he had purchased the house property in question from his brother-in-law, it is certain that it was a private arrangement between him and the former landlord (who were closely related to the Applicant) with intention that the tenants can be evicted by invoking Section 13A1 of the Act; as, in less than one and half years' time of the sale transaction, the Applicant/landlord proceeded to file application for possession of the suit premises from the tenants on the ground of bonafide requirement by invoking special provisions of Section 13A1 of the Act.

19. Somewhat similar situation, as in this case, had occasioned in the case of **Tukaram Dhondonpant Bhure vs. Lt.Colonel Vijaysinh Gopalrao reported in 1989 Mah.R.C.J. 628**. In that case, the plot in question belonged to the original owner Jagtap, who happened to be the uncle of the Respondent. In 1950, the plot was transferred by the original owner Jagtap in the name of the father of the Respondent. The Respondent's father thereafter constructed chawl in the year 1954 and a

block was leased out in favour of the Petitioner therein. The Petitioner paid the rent to the Respondent's father all along. On March 15, 1984, the Respondent's father made application to the City Survey Officer for entering the name of the Respondent as co-owner which application was granted on May 11, 1984. Thereafter, on May 11, 1986, the Respondent's father informed the City Survey Officer that oral partition has now been effected between the father and the son and the chawl has been allotted exclusively to the share of the Respondent. The Respondent was incidentally member of the armed forces. He obtained certificate from the competent Authority and gave notice of eviction to the tenants on April 7, 1987 on the ground that the premises were required for bonafide occupation by him and his family members, especially for his childrens' education. This Court after taking into account totality of the circumstances, found that the facts unmistakably establish that the requirement was not bonafide but was positively malafide. Similar conclusion will have to be reached in the fact situation of the present case.

20. Counsel for the tenants had relied on another decision of this Court in **C.K.S. Rao vs. Miss.Kanta Udharam Jagasia reported in 1990 Mah.R.C.J. 206**. Even in that case, the Court found that the requirement was not bonafide on the reasoning that the claim of the landlord of partition of the ground floor of the building was unacceptable. One of the reason for that view was that although it was partition in respect of immovable property, the same was not registered and therefore could not be looked into. Suffice it to observe that the conclusion reached by the competent Authority on issue No.4 cannot be said to be one according to law, inasmuch as there is manifest error in the approach in deciding the said issue. As mentioned earlier, every circumstance cannot be considered in isolation, but the competent Authority ought to have taken totality of the situation into account as emerging from the various circumstances. In other words, issue No.4 is answered against the Applicant/landlord.

21. Even assuming that the sale transaction in

favour of Applicant/landlord is a genuine one and not merely to take benefit of section 13A1 of the Act, the question is: whether the Applicant/landlord has established the claim of bonafide requirement for himself and members of his family.

22. The Applicant in the present case, who was member of the armed forces of the Union invoked this special provision for the requirement of the members of the family, namely, his old aged parents and also for the children for education. To examine this claim, it will be necessary to advert to the definition of member of the family provided in the explanation below sub-section (2) of Section 13A1 of the Act. Clause (2) of the Explanation reads as under:

> "(2) "member of the family" means any of the following members of the family of a member of the armed forces of the Union, or a scientist, as the case may be, who is ordinarily residing with him and who is dependent on him and where member of the armed forces of the Union or a scientist has retired or died, any member of his family who is so resident or dependent at the time of his retirement or, as the case may be, death, namely:-

> Spouse, father, mother, son, daughter, grand-son, grand-daughter, son's wife, grand-son's wife, widow of pre-deceased son or grand-son."
>
> (emphasis supplied)

23. The competent Authority has held as of fact that there is no pleading in the Applications as filed that the parents of the Applicant were members of his family and were dependent on him. On going through the applications as filed, there is no reason to doubt the correctness of this finding of fact recorded by the competent Authority. If it is so, the requirement for parents will be of no assistance to the Applicant for the purpose of the present provision. Mr.Dalvi for the landlord, however, submits that it has come in evidence that the landlord's parents were staying with him and required medical attention. If this position is accepted, the claim of the Applicant under Section 13A1 will have to be granted. It is submitted by Mr.Dalvi that dependency of the parents need not be only financial dependency but it can also be for assistance on account of medical facility or such

matters. The argument of Mr.Dalvi though attractive, is of no avail to the fact situation of the present case. As has been rightly held by the competent Authority, all that has been mentioned in the applications by the Applicant is that his aged parents are finding it very difficult to accompany him at every posting. The Applicant's father is 75 years old and is a patient of hypertension and acute arthritis; that the Applicant's mother is 70 years old and is also patient of hypertension and failing eye-sight. It is then mentioned that best medical facilities at the Cantonment Hospital are available for the parents of the Applicant at Pune. It is then stated that the Applicant's family consists of himself, his wife, two children - aged 14 studying in 9th standard and aged 12 studying in 8th standard respectively and his aged parents. Even if the averments made in the application are read liberally, nowhere it is mentioned that the parents of the Applicant/landlord are "ordinarily residing with him" and were "dependant on him". In law, to be the member of the family, such person should not only be ordinarily residing with the landlord, but also dependent on him. In a given

case, even if the person dependent on the landlord is staying with the landlord occasionally and not ordinarily, it will be of no avail. The requirement of Section 13A1 is a twin requirement of "ordinarily residing" with the landlord, and "dependent on him". In the present case, it is not necessary for me to examine whether dependence should be construed as only financial dependence or would also include dependence on account of medical aid and so on. Suffice it to observe that the requirement of that Section, which is a special provision for the benefit of the members of armed forces of the Union, it is necessary to plead and establish the twin requirements- that such member of the family is ordinarily residing with the landlord and also dependent on him. If these two requirements are not positively alleged in the application and proved in evidence, the claim under this provision cannot succeed. In the present case, as has been rightly found by the lower Authority, there is no pleading in the application to attract the ground under Section 13A1 of the Act, insofar as the requirement of the Appellant’s parents is concerned. Moreover, the fact that the

parents were ordinarily residing with the Applicant or dependent on him, was stoutly denied by the tenants. In the evidence (cross examination), the landlord was confronted on this issue. Suffice it to observe that as the applications lack material facts or averments that the parents were ordinarily residing with the Applicant/landlord and dependant on him, the claim for requirement of the parents cannot be looked into for want of pleadings.

24. Insofar as the requirement of the children for education, the competent Authority has considered the same in paragraph 26 of the impugned Judgment. The competent Authority has found that the Applicant has a son and a daughter and both are schooling at Bombay in Central School. The Applicant’s son was 14 years old, whereas Applicant’s daughter was 12 years old. The case of the Applicant was that due to frequent transfers, he cannot keep his family at one place which was affecting educational prospectus of his children. According to the Applicant, the children can be admitted to Central School at Pune for better education. The competent Authority, however, has

found that the Applicant was in teaching line and normally his postings were at important stations where Central Schools are established. The Applicant was working at places like Hyderabad before being transferred to Bombay. The competent Authority has then found that there was no evidence on record to show that the Applicant was transferred or posted at a place where Central School facility was not available to his children on account of which they had to suffer. The competent authority has then observed that for the purpose of requirement of education of children, the Applicant ought to have made efforts to take possession of the first floor premises from the vendor. However, no steps were taken by the Applicant in that behalf even till recording of the evidence. It is for the first time during evidence, the Applicant/landlord stated that even if he were to get possession of first floor, that would not be sufficient for the requirement of his family members. This plea of the Applicant, which has come for the first time during evidence, has been rightly discarded by the competent Authority, as no such case is made out in the Application.

The competent Authority has then observed that the family of the Applicant consists of his wife and two children. There was nothing to indicate as to how the Applicant's children of tender age were to stay alone at Pune to pursue their education. The competent Authority has found that first floor which consisted of four rooms would have been sufficient for two children of the Applicant for their residence. However, no attempt was made to take back possession of the first floor and attic from the vendor(s) who incidentally happens to be the brother-in-law of the Applicant/landlord. Taking overall view of the matter, the competent Authority has found that the claim of the Applicant of requirement for the education of children also was not bonafide. The view so taken by the competent Authority insofar as the requirement of children of the Applicant for education, is a possible view. This view is based on the materials on record. Accordingly, this finding of the lower Authority is unexceptional and warrants no interference. As mentioned earlier, I have examined this issue on the hypothesis that the sale transaction in favour of the Applicant is not

colourable transaction but was genuine one, not intended to take advantage of the special provision of the Section 13A1 of the Act.

25. Taking any view of the matter, the claim of the landlord for possession on the ground of bonafide requirement for members of his family, in my opinion, has been rightly answered against the landlord by the competent Authority. In other words, the final conclusion reached by the competent Authority of dismissing the applications for possession made by the landlord under Section 13A1 will have to be upheld.

26. Counsel for the tenants had urged that this Court may take subsequent developments into account for the simple reason that if this Court were to accept the claim of the landlord for the first time, order of eviction would be passed against the tenants. If so, it was necessary to take into account subsequent developments that the parents of the landlord were no more and that both the children of the landlord have already settled abroad. However, it is not necessary for me to go

into these aspects of the matter. For the view I have already recorded earlier and also because there is no formal application for bringing on record subsequent events or for amendment of the original pleadings.

27. Accordingly, Revision Applications filed by the landlord being Revision Application Nos.15/92 and 16/92 are rejected. Whereas,

Revision Applications filed by the tenants being Revision Application Nos.258 of 2001 and 259 of 2001 are allowed. No order as to costs.

A.M.KHANWILKAR, J.